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his reputation, acquired at great expense of money and effort, from being used as a weapon against him. The partial appropriation of this reputation by the cut price retailer for the purpose of discrediting the particular brand of goods, destroying the general market for them and attracting people into the cut price store to enable the proprietor to foist off other brands is a trading upon the name and reputation of the manufacturer in a way not equitable,⁵ being neither authorized by the manufacturer nor paid for in the purchase price of the goods.

M. K. W.

CONTRACTS: REPUDIATION: SALE BY VENDOR TO THIRD PARTY.—Repudiation has been defined to be "such words or actions by a contracting party as indicate that he is not going to perform his contract in the future;"¹ as, for example, by saying he is not going to perform. An unequivocal repudiating act should equally be considered a breach as, for example, where the vendor in a contract to sell land to A conveys to B, an innocent purchaser, and under no duty to convey to A. A should not be required to hold himself in readiness to perform and wait to see whether B will choose to carry out the vendor's contract. The California law has been assumed to be otherwise,² but Mr. Justice Henshaw, in *Brimmer v. Salisbury*,³ in a careful review of the authorities points out that in such cases as *Joyce v. Shafer*⁴ there was no showing that the vendor was conveying in disregard of the first purchaser's rights; for all that appeared he may have been selling in strict subordination to the first purchaser's equitable title. The California law is thus shown to be in accord with authority and sound principle.

A. M. K.

CONTRIBUTORY NEGLIGENCE: STORING COMBUSTIBLE MATERIAL ON PLAINTIFF'S LAND ADJOINING RAILROAD RIGHT OF WAY.—The partially concurring opinion of Justice Holmes, with whom Chief Justice White agreed, in the case of *Leroy Fibre Company v. Chicago, M. & S. P. Ry.*,¹ raises the question whether a man may be guilty of contributory negligence on account of the location, or material, or contents of a structure which he has erected on his own land, but adjoining, or close to, a line of railroad. The minds of Justice McKenna, who writes the opinion of the court, and Jus-

⁵ For a clear description of the methods of illegitimate price cutters, and a discussion of the producer's equitable rights, see *Predatory Price Cutting as Unfair Trade*, 27 Harv. Law Rev. 139.

¹ Wald's *Pollock on Contracts*, 3d ed. by Williston, p. 333.

² *Joyce v. Shafer*, (1893) 97 Cal. 335, 32 Pac. 320; *Shiveley v. Semitropic etc. Co.*, (1893) 99 Cal. 259, 33 Pac. 848; *Garberino v. Roberts*, (1895) 109 Cal. 125, 41 Pac. 857; Wald's *Pollock on Contracts*, 3d ed. by Williston, p. 354.

³ (Mar. 27, 1914) 47 Cal. Dec. 469.

⁴ (1893) 97 Cal. 335, 32 Pac. 320.

¹ (Feb. 24, 1914) 232 U. S. 340, 34 Sup. Ct. Rep. 415.